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9 *Nevada Department of Corrections*

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12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 DE'MARIAN A. CLEMONS,

15 Plaintiff,

16 vs.

17 BRIAN WILLIAMS, *et al.*,

18 Defendants.

Case No. 2:13-cv-00093-RFB-NJK

**STATE DEFENDANTS' UNOPPOSED
MOTION AND PROPOSED ORDER
TO MAKE PLAINTIFF AVAILABLE
FOR AN EXPERT MEDICAL
EXAMINATION**

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20 Defendants Tanya Hill, Francisco Sanchez, Brian Williams, State of Nevada, and
21 the Nevada Department of Corrections (the "State Defendants"), by and through counsel,
22 Randall Gilmer, Chief Deputy Attorney General, and Jared M. Frost, Senior Deputy
23 Attorney General, hereby move for an order compelling Plaintiff to make himself available
24 for a physical examination. Defendants' unopposed motion is made and based on the
25 following memorandum of points and authorities, the attached Declaration of Counsel, the
26 pleadings and papers on file, and any additional evidence the Court deems appropriate to
27 consider.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND**

3 This is an inmate civil rights and state tort matter. In the First Amended Complaint,
4 Plaintiff DeMarian Clemons alleges he suffered various physical injuries as the result of
5 Defendants' acts or omissions. *See* ECF No. 242 at 3-4. On October 25, 2019, the Court
6 granted Plaintiff's unopposed motion to make Plaintiff available for a medical examination
7 by his expert. *See* ECF No. 276. Plaintiff's expert examination was recently completed, and
8 the State Defendants now seek an order under Rule 35 to conduct their own expert medical
9 examination.

10 **II. APPLICABLE LAW**

11 Rule 35 of the Federal Rules of Civil Procedure provides as follows:

12 (a) Order for an Examination.

13 (1) In General. The court where the action is pending may
14 order a party whose mental or physical condition—including
15 blood group—is in controversy to submit to a physical or mental
16 examination by a suitably licensed or certified examiner. The
17 court has the same authority to order a party to produce for
18 examination a person who is in its custody or under its legal
19 control.

16 (2) Motion and Notice; Contents of the Order. The order:

17 (A) may be made only on motion for good cause and on
18 notice to all parties and the person to be examined; and

18 (B) must specify the time, place, manner, conditions, and
19 scope of the examination, as well as the person or persons who
will perform it.

20 **III. ARGUMENT**

21 The Court should determine the State Defendants' Unopposed Motion is supported
22 by good cause and grant the Motion. The State Defendants have arranged for Plaintiff to
23 be examined by their medical expert, Dr. Randa Bascharon, in Las Vegas during the week
24 of January 20, 2020. *See* Exhibit 1 (Declaration of Counsel). The expert examination is
25 necessary to assess the extent of Plaintiff's injuries and to determine what future care
26 Plaintiff may require. *Id.* Pursuant to discussions with Plaintiff's counsel, Plaintiff and the
27 State Defendants have agreed that the only persons who will be permitted to attend the
28 examination are:

1 1. Plaintiff

2 2. Dr. Bascharon

3 3. Nevada Department of Corrections staff necessary to ensure the safety and
4 security of Plaintiff; Dr. Bascharon and her staff; and the public.

5 *Id.* Subject to the foregoing agreement, Plaintiff does not oppose the State Defendants'
6 Motion. *Id.* Further, the State Defendants have contacted Attorney Kerry Doyle in an effort
7 to provide Defendant Cheryl Dressler with an opportunity to be heard. *Id.* However, as of
8 the filing of this Motion, Ms. Doyle has not responded. *Id.* Should the State Defendants
9 learn that Defendant Dressler has any objection to their Motion, they will file a notice with
10 the Court. *Id.*

11 **IV. CONCLUSION**

12 The Court should grant the State Defendants' unopposed motion to make Plaintiff
13 available for a medical examination.

14 DATED this 14th day of January, 2020.

15 AARON D. FORD
16 Attorney General

17 By: /s/ Jared M. Frost
18 JARED M. FROST (Bar No. 11132)
19 Senior Deputy Attorney General
20 D. RANDALL GILMER (Bar No. 14001)
21 Chief Deputy Attorney General

22 *Attorneys for Defendants Tanya Hill,*
23 *Francisco Sanchez, Brian Williams, State of*
24 *Nevada, and the Nevada Department of*
25 *Corrections*

ORDER

SO ORDERED. The State Defendants are authorized to conduct an expert medical examination of Plaintiff during the week of January 20, 2020. The only persons who may attend the examination are (1) Plaintiff; (2) Dr. Bascharon; and (3) Nevada Department of Corrections staff necessary to ensure the safety and security of Plaintiff; Dr. Bascharon and her staff; and the public.

Dated this 15 day of January, 2020.


UNITED STATES MAGISTRATE JUDGE

EXHIBIT 1

Declaration of Counsel

EXHIBIT 1

1 AARON D. FORD
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2 D. RANDALL GILMER (Bar No. 14001)
Chief Deputy Attorney General
3 JARED M. FROST (Bar No. 11132)
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Case No. 2:13-cv-00093-RFB-NJK

DECLARATION OF COUNSEL

20 I, JARED M. FROST, hereby declare, based on personal knowledge and/or information
21 and belief, that the following assertions are true:

22 1. I am a Senior Deputy Attorney General employed by the Nevada Attorney
23 General in the Litigation Division, and I make this declaration in support of the State
24 Defendants' Unopposed Motion To Make Plaintiff Available For An Expert Medical
25 Examination.

26 2. The State Defendants (Tanya Hill, Francisco Sanchez, Brian Williams, State
27 of Nevada, and the Nevada Department of Corrections) have arranged for Plaintiff to be
28 examined by their medical expert, Dr. Randa Bascharon, in Las Vegas during the week of

1 January 20, 2020. A more specific date and time is not provided here due to safety and
2 security reasons. Should the Court deem it necessary, the State Defendants will provide
3 this additional information under seal.

4 3. The expert examination is necessary to assess the extent of Plaintiff's injuries
5 and to determine what future care Plaintiff may require.

6 4. Pursuant to discussions with Plaintiff's counsel, the State Defendants and
7 Plaintiff have agreed that the only persons who will attend the examination are:
8 (1) Plaintiff; (2) Dr. Bascharon; and (3) Nevada Department of Corrections staff necessary
9 to ensure the safety and security of Plaintiff; Dr. Bascharon and her staff; and the public.

10 5. On January 13, 2020, Plaintiff's counsel confirmed that, subject to the
11 foregoing agreement, Plaintiff does not oppose the State Defendants' Motion.

12 6. On January 13, 2020, counsel for the State Defendants also contacted
13 Attorney Kerry Doyle, Esq., concerning their Motion in an effort to provide Defendant
14 Cheryl Dressler with an opportunity to be heard. However, as of the time of filing, Ms.
15 Doyle has not responded.

16 7. Should the State Defendants learn that Defendant Dressler has any objection
17 to their Motion, they will file a notice with the Court.

18 Pursuant to 28 U.S.C. section 1746, Declarant certifies, under penalty of perjury,
19 that the foregoing is true and correct.

20 DATED this 14th day of January, 2020.

21 AARON D. FORD
22 Attorney General

23 By: /s/ Jared M. Frost
24 JARED M. FROST (Bar No. 11132)
Senior Deputy Attorney General

25 *Attorneys for the State Defendants*
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